

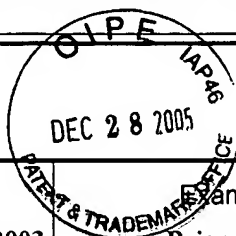
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TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
ZDC-15502/03

In Re Application Of: Sun Yu

Application No.
10/668,522Filing Date
September 23, 2003Examiner
Brian GreenCustomer No.
25006Group Art Unit
3611Confirmation No.
1879

Invention: GREETING CARD INCORPORATING ULTRAVIOLET LIGHT EMITTING DIODE

COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:
October 28, 2005

☒ Applicant claims small entity status. See 37 CFR 1.27

The fee for filing this Appeal Brief is: \$250.00

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Dated: December 28, 2005

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Sun Yu

Serial No.: 10/668,522

Group Art Unit: 3611

Filing Date: September 23, 2003

Examiner: Brian Green

For: GREETING CARD INCORPORATING ULTRAVIOLET LIGHT EMITTING
DIODE

APPEAL BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. Real Party in Interest.

The real party in interest in this appeal is the assignee, Zen Design Group Ltd., a Michigan corporation.

II. Related Appeals and Interferences.

There are no other related appeals or interferences.

III. Status of the Claims.

Claims 1-3, 7, 10, 11 and 13 are pending in this application and are the subject of this appeal. Claims 1, 3 and 10 currently stand rejected under 35 U.S.C. §103(a) over Solomon et al. (US 2003/0025316) in view of Ristow et al. (US 1,861,136) and Funk et al. (US 6,269,169). Claims 2, 7 and 11 currently stand rejected under 35 U.S.C. §103(a) over Solomon et al. in view

of Ristow et al., Funk et al., and further in view of Prescott et al. (US 6,805,459). Lastly, claim 13 stands rejected under 35 U.S.C. §103(a) over Solomon et al. in view of Ristow et al., Funk et al., and further in view of Heinze, III (US 6,047,802).

IV. Status of Amendments Filed Subsequent to Final Rejection.

An amendment was filed August 1, 2005 in response to the final rejection mailed May 13, 2005. The August 1, 2005 amendment has been entered and no subsequent amendments have been proffered.

V. Summary of Claimed Subject Matter.

The present invention being claimed is a greeting card that has a portion of the message written in invisible ink with a compact ultraviolet light source provided for visualizing the invisible ink of the greeting card. With regard to independent claim 1, a greeting card is manifest as a substrate sheet having ink visible under visible light and a second ink visible under ultraviolet wavelengths of between 350 and 400 nanometers (page 4, lines 4-6; Figure 3) and an ultraviolet light emitting diode flashlight having a single light emitting diode and a light emission of between 350 and 400 nanometers (page 5, line 15 – page 6, line 6; Figures 3 and 4). Claim 2 provides a securement for retaining the flashlight in contact with the substrate (page 4, line 9; page 5, lines 1-8; Figure 3). Claim 7 recites the securement being a hook-and-loop fastener (page 5, lines 1-8; Figure 3). Claim 11 includes all the limitations of claim 1 and in addition recites that the substrate has a fold (Figure 3) and the securement “retaining said ultraviolet light emitting diode flashlight oriented such that when said substrate is horizontal, emission from said flashlight illuminates at least one of the exterior lighting surface and the interior lighting surface” (page 5, lines 6-8). Claim 13 is a commercial package inclusive of the claimed subject matter of

claim 1 in addition to a pen containing ultraviolet visible ink along with instructions for writing on the greeting card with the pen (page 6, line 20 – page 7, line 4).

VI. Grounds of Rejection to Be Reviewed on Appeal.

As set forth in the Office Action mailed November 17, 2004 (Paper No. 5), the ground of rejection is obviousness of the claims under 35 U.S.C. §103(a) over the prior art reference combination of Solomon et al. in view of Ristow et al. and Funk et al. in regard to pending claims 1, 3 and 10. Prescott was added to this prior art reference combination as the basis for the obviousness rejection of claims 2, 7 and 11. Finally, Heinze, III was added to the base prior art reference combination in order to reject claim 13 as obvious.

VII. Argument.

The pending claims have a preamble and supporting specification that indicate the claimed subject matter to be in the field of greeting cards. A greeting card is known to all to be an inexpensive form for conveying a written sentiment. The motivation for the claimed invention has already been stated succinctly in the specification at page 2, lines 1-11. The provision of an ultraviolet (UV) emission device commensurate in size and cost with a greeting card, and the association of such a light source with the substrate containing UV visualized indicia is the cornerstone of the claimed invention.

Solomon et al. is concerned with a diary or journal that a casual observer would consider to be devoid of written indicia and includes a UV lamp or light fixture containing an ultraviolet light bulb. The teaching within Solomon et al. of a light bulb such as a mercury vapor discharge bulb ([0015]) and a hand strap ([0013]) makes clear that a lighting device of considerable size (relative to an inventive UV LED flashlight). Solomon et al. makes clear that the UV lamp or light fixture is to be stored remote from the diary or journal. Ristow et al. is cited as teaching a

conventional visible ink greeting card and as such does not bolster the teachings of Solomon et al. with regard to the light source limitations. Funk et al. teaches in the context of a document analyzer, illumination with an ultraviolet light emitting diode array.

It is respectfully submitted that these rejections fail for several reasons. (1) The combination as provided still lacks the limitations of independent claim 1, namely that the flashlight has a light source consisting of a single light emitting diode; Funk et al. only teaches an array of diodes. (2) The prior art reference combinations fails to satisfy the limitations of a “flashlight” as used within the claims and specification. The size and cost of a hybrid light source produced through the prior art reference combination is impractical in the context of a greeting card, and as such it is submitted that one of skill in the art would lack a motivation for such a combination. (3) Solomon et al. had knowledge the existence of ultraviolet light emitting diodes as of the date of invention (see for example Funk et al.) and elected to exclude light emitting diode ultraviolet sources as a possible light source; the prior art reference combination on which the rejection is based in regard to Funk et al. as such lacks motivation. (4) The linkage of a UV light source with a substrate is contrary to the teachings of Solomon et al. in that such a linkage destroys the intended security provided to an owner of the substrate since an unauthorized discover of such a substrate would have the tool and the indication that there is UV visualized ink on the seemingly blank pages.

The rejection of claims 2, 7 and 11 relies on the above reference combination and further includes Prescott et al. to bolster the combination with respect to the use of a securement device “to attach the light source/flashlight to the stationery since this would allow the light source/flashlight to be attached to the stationery in an easier and more convenient manner.” (November 17, 2004 Office Action (Paper No. 5), paragraph bridging pages 6-7).

In addition to the above comments with regard to the three reference prior art combination (Solomon et al. with Ristow et al. and further in view of Funk et al.), it is respectfully submitted that the prior art reference combination inclusive of Prescott et al. destroys the purpose of the invention of Solomon et al. and as such is improper. Remember Solomon et al. is intended to keep a casual observer from reading the contents of a personal diary in that such an observer would look at a diary that would appear to be devoid of markings and not pay further attention. The securement of an ultraviolet lighting device to such a diary or journal is effectively no better than writing in conventional visible ink and thus provides no measure of security. Additionally, the prior art reference combination is submitted to be deficient in that Prescott et al. fails to secure a lighting device to the substrate having printed indicia to be illuminated. Rather, Prescott et al. secures a lighting device to a book cover and not the pages themselves. As a result, the prior art reference combination including Prescott et al. lacks this limitation.

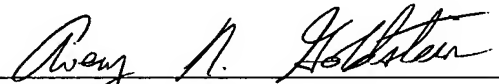
In regard to claim 13, Applicant relies on the incorporation by reference of the limitations of claim 1 into this claim and the above remarks with respect to Solomon et al. in view of Ristow et al. and further in view of Funk as a basis for allowability.

Applicant respectfully submits that the outstanding obviousness rejections are a result of the Examiner applying a hindsight reconstruction to supply deficiencies in the factual basis for the rejection. Regardless of whether the Examiner has doubts as to the patentability of the invention, hindsight reconstruction is not permissible. See *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). Rather, in determining obviousness, “the [E]xaminer can satisfy the burden of showing obviousness of the combination ‘only by showing some objective teaching in the prior art or that knowledge generally available

to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.”” *In re Lee*, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). “Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact.” *Dembiczak*, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing *McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993). It is respectfully submitted that this burden has not been met by the outstanding rejections.

For all the foregoing reasons, Applicant respectfully submits that the outstanding rejections of claims 1-3, 7, 10, 11 and 13 are in error and should be reversed. Such action is respectfully solicited.

Respectfully submitted,



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Janice R. Kuehn
Janice R. Kuehn

CLAIMS APPENDIX

1. An illuminated greeting card comprising:

a substrate sheet having indicia formed of a first ink readable under visible light and having indicia thereon formed of a second ink readable under light having a wavelength of between 350 and 400 nanometers; and

an ultraviolet light emitting diode flashlight having a light source consisting of: a single light emitting diode and having a light emission of between 350 and 400 nanometers.
2. The greeting card of claim 1 further comprising a securement for retaining said ultraviolet light emitting diode flashlight in contact with said substrate.
3. The greeting card of claim 1 wherein said substrate sheet has a fold line therein.
7. The greeting card of claim 2 wherein said securement is a hook and loop fastener.
10. The greeting card of claim 1 further comprising a third ink readable under incident light having a wavelength of between 350 and 400 nanometers, said third ink having a color different than said second ink under illumination from a single light source.
11. An illuminated greeting card comprising:

a folded substrate having an outer writing surface and an inner writing surface, wherein at least one of the exterior writing surface and the interior writing surface has thereon indicia

formed of a first ink readable under visible light and indicia formed of a second ink visible under incident light having a wavelength of between 350 and 400 nanometers;

an ultraviolet light emitting diode flashlight having a light emission of between 350 and 400 nanometers; and

a securement retaining said ultraviolet light emitting diode flashlight oriented such that when said substrate is horizontal, emission from said flashlight illuminates at least one of the exterior writing surface and the interior writing surface.

13. A commercial package comprising an illuminated greeting card according to claim 1 and a pen comprising an ink visible under incident light having a wavelength of between 350 and 400 nanometers along with instructions for writing with said pen on said greeting card.

EVIDENCE APPENDIX

None

Serial No. 10/668,522
Appeal Brief

RELATED PROCEEDINGS APPENDIX

None